IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

WTR No.50 of 1989
Date of decision:28.11.2006

The Commissioner of Wealth Tax, Patiala

....Petitioner

versus

M/s. Jagdish Lal and Bros., Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the petitioner.

Mr. SK Mukhi, Advocate, for the respondent.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal'), arising out of its order dated 29.7.1987 in WTA No.484 of 1985, for the assessment year 1977-78:-

> "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that partial partition can be recognised under section 20 of the Wealth-tax Act, 1957 even though no such orders of recognising partial partition have been passed under section 171 of the Income Tax Act, 1961?"

During the assessment for the assessment year 1977-78, the assessee claimed that partial partition had taken place on 5.4.1976 under section 20 of the Wealth Tax Act, 1957 (for short, 'the 1957 Act'). This plea was not accepted on the ground that no order had been passed under section 171(2) of the Income Tax Act, 1961 (for short, 'the 1961 Act') accepting partial partition and, therefore, the same could not be accepted under the Act. On appeal, the plea of the assessee was accepted and it was held that partial partition was permissible under section 20 of the 1957 Act irrespective of any finding under section 171(2) of the 1961 Act.

We have heard learned counsel for the parties and perused the findings recorded.

Learned counsel for the assessee, at the outset, submitted that the matter is covered in favour of the assessee by judgment of this Court in **CIT v. Harbhagwan and Sons,** (1993) 203 ITR 240, wherein, it was held that even though, partial partition was not covered by Section 20 of the 1957 Act, the effect of partial partition can be taken into account to hold that the property was held by the members of the family as tenants-in-common and not as joint tenants and result thereof is that the property will no longer be joint Hindu family property and in such a case, the entire value of the property could not be included in the net wealth of the assessee. Relevant observations in the said judgment are :-

> "What is "partition" under Hindu law? Under Hindu law, property can be partitioned orally as well as by writing a memorandum of partition. Further, the partition can either be a complete partition of all the properties of the Hindu undivided family qua all the persons entitled to get a share in these properties or it may be partial. Partial partition can either be of a particular property belonging to the Hindu undivided family as it is open to members of the Hindu undivided family to enter into a partial partition and to hold the properties so partitioned as tenants-in-common while continuing to be joint in respect of other properties of the family. Further, a partial partition can be that when one of the members of the Hindu undivided family becomes separate from the other members who continue to be joint in status...."
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> "...The contention of counsel for the Department that until and unless an order under section 20(2) of the Wealth-tax Act is passed, the plot at Railway Road, Karnal, should continue to be treated as property of the Hindu undivided family notwithstanding that the same is the subject matter of partial partition and the coparceners agreed to hold the same as tenants-in-common, cannot be accepted...."

Reference was made to judgment of the Karnataka High Court in **CWT v. M.L.Ramachandra Setty and Sons,** (1979) 116 ITR 545, wherein, it was observed as under:-

> ".....The authorities under the Wealth-tax Act had, therefore, to decide these cases without any regard to

> section 20 of the Act, but with due regard to the Mitakshara law. It is well-settled that it is open to the members of a Hindu undivided family to agree to enter into a partial partition and to hold the properties which were the subject-matter of such partial partition, as tenants-in-common while continuing to be joint in respect of other properties of the family....”

The judgment of this Court in **Harbhagwan's** case (supra) was relied upon by the Madras High Court in **CWT v. P.S.Sridharan**, (2000) 241 ITR 835.

Learned counsel for the revenue has neither been able to cite any contrary judgment nor distinguish the view taken by this Court earlier.

In view of judgment of this Court in **Harbhagwan's** case (supra), which is directly on the point, the question is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 28, 2006
'gs'

(Rajesh Bindal)
Judge